

ORDINANCE NO. O-2014-112

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 17, "STREETS AND TRAFFIC", ARTICLE V., "STOPPING, STANDING, OR PARKING", BY ADOPTING A ONE YEAR MOBILE FOOD UNIT STREET VENDING PILOT PROGRAM; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; ESTABLISHING AN EFFECTIVE DATE; AND ESTABLISHING AN EXPIRATION DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, Texas Local Government Code Section 211.003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

WHEREAS, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, it is important to supplement health and safety regulations enforced by the Northeast Texas Public Health District; and

WHEREAS, it is important to adopt a one-year pilot program for food trucks; and

WHEREAS, major recommended substantive amendments were reviewed and recommended by the Traffic Safety Board;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 17, "Streets and Traffic", Article V., "Stopping, Standing, or Parking", is hereby amended by adopting a new Section 17-90 to read as follows:

Section 17-90. Mobile Food Unit Street Vending Pilot Program

- a. Purposes and Intent. This section is intended to implement elements of the Tyler 1st Comprehensive Plan and the Industry Growth Initiative by supporting small-business start-ups, diverse cuisine options, and tourism-inducing environments.
- b. Mobile Food Units as defined in Chapter 10 of this Code shall comply with operational requirements of Section 10-76 and this section.
- c. Mobile Food Units exclusively selling frozen desserts may operate on any City street provided that they do not impair the safety of the public and operate in a safe manner.
- d. Mobile Food Units not exclusively selling frozen desserts must obtain a Transient Vendor Permit from the Planning Department to be authorized to operate in all locations identified in subsection (e) of this Section.
- e. Mobile Food Units shall only operate with curbside service on a City street under the following conditions:
 1. At an active construction site during hours of active construction:
 - i. On a street with a designated speed limit of 30 MPH or less and outside of a travel lane; and
 - ii. For a duration not to exceed 3 hours; and
 - iii. Not between the hours of 10:00 PM and 7:00 AM; and
 - iv. No closer than 50 feet from an intersection; and
 - v. No closer than 300 feet from a restaurant without documented permission; and
 - vi. In compliance with the noise regulations in Section 4-90 of this Code; and
 - vii. In a manner that does not impede traffic circulation nor impairs the safety of the public including but not limited to infringing upon sight visibility.
 2. Within the Midtown District adjacent to institutional uses:
 - i. On East Douglas Boulevard, South Saunders Avenue, Idel Street, South Baxter Avenue, East Lake Street, South Mahon Avenue, and Palmer Avenue, outside of a travel lane; and
 - ii. For a duration not to exceed 3 hours; and
 - iii. Not between the hours of 10:00 PM and 7:00 AM; and
 - iv. No closer than 50 feet from an intersection; and
 - v. No closer than 300 feet from a restaurant without documented permission; and
 - vi. In compliance with the noise regulations in Section 4-90 of this Code; and
 - vii. In a manner that does not impede traffic circulation nor impairs the safety of the public including but not limited to infringing upon sight visibility.
 3. Within the University Woods District:
 - i. On Varsity Drive adjacent to the University of Texas-Tyler outside of a travel lane; and
 - ii. For a duration not to exceed 3 hours; and
 - iii. Not between the hours of 10:00 PM and 7:00 AM; and
 - iv. No closer than 50 feet from an intersection; and
 - v. No closer than 300 feet from a restaurant without documented permission; and
 - vi. In compliance with the noise regulations in Section 4-90 of this Code; and
 - vii. In a manner that does not impede traffic circulation nor impairs the safety of the public including but not limited to infringing upon sight visibility.
 4. Within the Texas College District adjacent to Texas College:
 - i. On West 29th Street and North Englewood Avenue outside of a travel lane; and
 - ii. For a duration not to exceed 3 hours; and

- iii. Not between the hours of 10:00 PM and 7:00 AM; and
 - iv. No closer than 50 feet from an intersection; and
 - v. No closer than 300 feet from a restaurant without documented permission; and
 - vi. In compliance with the noise regulations in Section 4-90 of this Code; and
 - vii. In a manner that does not impede traffic circulation nor impairs the safety of the public including but not limited to infringing upon sight visibility.
5. On a street abutting properties zoned "DBAC", Downtown, Business, Arts and Culture District:
- i. On a street with a designated speed limit of 30 MPH or less and outside of a travel lane; and
 - ii. For a duration not to exceed 3 hours; and
 - iii. Between the hours of 10:00 PM and 2:00 AM; and
 - iv. Not on College Avenue and Spring Avenue between Ferguson Street and Erwin Street, nor Ferguson Street and Erwin Street between College Avenue and Spring Avenue, otherwise known as the "Square"; and
 - v. No closer than 50 feet from an intersection; and
 - vi. No closer than 300 feet from the front door of a restaurant without documented permission; and
 - vii. In compliance with the noise regulations in Section 4-90 of this Code; and
 - viii. In a manner that does not impede traffic circulation nor impairs the safety of the public including but not limited to infringing upon sight visibility.
6. On a street abutting a City park:
- i. On a street with a designated speed limit of 30 MPH or less and outside of a travel lane; and
 - ii. On a curb adjacent to the park; and
 - iii. Not while an authorized event is being held at said park that authorizes Mobile Food Units or during a fundraising activity involving concessions unless the Mobile Food Unit is part of such activity; and
 - iv. For a duration not to exceed 3 hours; and
 - v. During the park's normal operating hours; and
 - vi. No closer than 50 feet from an intersection; and
 - vii. No closer than 300 feet from a restaurant without documented permission; and
 - viii. In compliance with the noise regulations in Section 4-90 of this Code; and
 - ix. In a manner that does not impede traffic circulation nor impairs the safety of the public including but not limited to infringing upon sight visibility.
- f. Mobile Food Units must observe posted parking limitations and restrictions.
- g. Any unauthorized connection to the water system and/or unauthorized dumping of grease into the sanitary sewer system in conjunction with the operation of a mobile food unit in any way is strictly prohibited and is unlawful.
- h. Any permit issued by the City will become void should the holder's Northeast Texas Public Health District permit be suspended or revoked. The Planning Director is authorized to revoke and withhold Transient Vendor Permits for vendors and/or locations at the Director's discretion if there are documented repeated violations of this section.
- i. This pilot program will expire within one year of adoption unless extended by City Council. (Ord. No. 0-2014-112, 12/10/14)

PART 3: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be Friday, December 12, 2014.

PASSED AND APPROVED this 10th day of December, A.D, 2014.



MARTIN HEINES, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK

APPROVED:



DEBORAH G. PULLUM,
CITY ATTORNEY

